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U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONY K. SCHNOOR,

Plaintiff,

v.

CLARK COUNTY, *et al.*,

Defendants.

Case No. C00-5250FDB

ORDER DENYING MOTION TO
WITHDRAW COMPLAINT AND
ADOPTING REPORT AND
RECOMMENDATION

The Magistrate Judge issued his Report and Recommendation, and upon his request, Plaintiff was given an extension of time to file his objections. Plaintiff then moved to amend his complaint, which the Magistrate Judge denied because the proposed amendment was a mere recharacterization of his original claim, which is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff now moves to withdraw his complaint.

Under the circumstances, it would be inappropriate at this late date to allow a withdrawal of the complaint; this motion will be denied and the Magistrate Judge's R & R will be adopted.

NOW, THEREFORE,

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ORDER - 1

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1 IT IS HEREBY ORDERED:

2 (1) Plaintiff's "Motion to Withdrawal [sic] Complaint" (Dkt. # 11) is DENIED;

3 (2) The Court adopts the Magistrate Judge's Report & Recommendation (Dkt. # 5);

4 (3) The Complaint and Plaintiff's causes of action are DISMISSED without prejudice as
5 frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. §
6 1915(A)(b)(1);

7 (4) Plaintiff may refile the action only if he can demonstrate that his conviction and/or
8 sentence has been invalidated; and

9 (5) The Clerk is directed to dismiss this action pursuant to **28 U.S.C. § 1915(e)(2)(B) and 28**
10 **U.S.C. § 1915A(b)(1)** and to send copies of this Order to plaintiff, to the Hon. J. Kelley Arnold, and
11 to the Office of the Attorney General.

12 DATED this 7 day of August 2000.

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15 FRANKLIN D. BURGESS
16 UNITED STATES DISTRICT JUDGE
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